



Attorney-General
Minister for the Arts, Creative Industries and
Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's comments regarding the Residential Tenancies Amendment Bill 2019 (the Bill). The issues raised by the Committee for which it requested a response are addressed below.

No Henry VIII clause

The Committee raised questions as to whether the new regulation-making power to prescribe minimum standards (clause 19, proposed new section 136(2)(d), (3), (4)) will 'amend the operation of the standard clauses'. By permitting the making of minimum standards for rental properties by regulation, clause 19 does not allow delegated legislation to amend primary legislation passed by the Assembly. That is, it is not properly characterised as a Henry VIII clause.

By way of clarification about the operation of the proposed regulation-making power, section 8 of the *Residential Tenancies Act 1997* (the RTA) provides that a residential tenancy agreement must contain, and is taken to, contain the Standard Terms in schedule 1 of the RTA. There are also certain requirements and processes under the RTA that apply in addition to the Standard Terms. As noted in the Explanatory Statement, the Standard Terms currently require the lessor to ensure that the premises, including furniture, fittings and appliances are fit for habitation, reasonably clean, in a reasonable state of repair, and reasonably secure. Stakeholders have indicated that there is significant ambiguity about precisely what this requirement entails. As such, one way the minimum standards may be used is to provide greater clarity in relation to this Standard Term. However, while the proposed power to make minimum standards is broad and may be used in this way, this would not constitute an amendment as to the Act and does not amend the Standard Terms as such.

The Committee also sought additional information on what changes to the rental market would require changes to these minimum standards to be made quickly. Being able to adjust the minimum standards quickly is essential to managing the overall housing stock of the ACT.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 2615 **Email** ramsay@act.gov.au



@Gordon_R_Ramsay



Gordon Ramsay MLA



First, it might be necessary to respond quickly to a matter of immediate concern by increasing or clarifying the standards. For example, it is plausible that public concern arises about particular building materials that an owner-occupier would replace but a tenant, restricted by the RTA from being able to make significant repairs, cannot replace. A disallowable regulation is an efficient and effective way to respond quickly to public concerns while also retaining oversight from the Assembly.

Second, it might be necessary to reduce the minimum standards in situations where there is a genuine housing crisis as a result of a sudden decrease in the housing stock. Following a significant flood or fire, housing of any quality might be needed urgently and as such it might be appropriate to reduce the minimum standards.

Notification requirements and incorporation of instruments including Australian Standards

The Committee raised concerns that the incorporation of instruments including the Australian Standards into prescribed minimum standards may restrict the ability of tenants and landlords to have the greatest possible clarity about the terms of the tenancy agreement. The Committee was further concerned that the incorporation of any such instruments may limit the oversight function of both the Committee and the Assembly. This concern flows from the premise that incorporated instruments and standards do not have to be registered on the ACT Legislation Register. In relation to this concern, I note that under the proposed regulation power, the regulation incorporating the relevant standard would still be subject to the Assembly's disallowance procedures. As such, there is scope for the Assembly to disallow the regulation incorporating a technical document or instrument if it so wished. Nevertheless, I acknowledge the significance of the concerns raised by the Committee, and assure the Committee that the provision is proposed only because these concerns are outweighed by the significant benefits that the proposed incorporation of instruments and standards under the proposed regulation-making power will facilitate for the broader community.

Incorporation of technical documents is common in property law and assists to ensure consistency across regulatory frameworks. For example, from the perspective of consistency, there would be an advantage if the tradesperson who already uses Australian Standards in their work on owner-occupied properties is not required to learn a bespoke standard for their work on tenant-occupied properties. Allowing for the incorporation of Australian Standards, in appropriate circumstances, will facilitate greater clarity, increased certainty, and broader acceptance among stakeholders who need to engage with the minimum standards. Australian Standards are also analysed by technical experts, reducing the likelihood of unintended consequences of their incorporation and mitigating any harm of unintended consequences if they eventuate.

Finally, in terms of the accessibility of Australian Standards, a copy of the National Construction Code, which incorporates the Building Code of Australia and the Plumbing Code of Australia, for example, is available for inspection by members of the public between 9am and 4.30pm on business days at the Access Canberra shopfront, Dame Pattie Menzies House, 16 Challis Street, Dickson.

I thank the Committee for its attention on these important matters of accountability.

Yours sincerely

Gordon Ramsay MLA
Attorney-General